



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 19, 1993

Ms. Sabelyn Arden
Texas Water Commission
Water Utilities Division
Monitoring & Enforcement
P.O. Box 13087
Austin, Texas 78711-3087

OR93-184

Dear Ms. Arden:

On your behalf, Ms. Leela R. Fireside, Assistant Attorney General in the Environmental Protection Division of the Office of the Attorney General, asks whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. This request was assigned ID# 19042.

The Texas Water Commission ("the commission") received an open records request for "the latest documentation pertaining to the present state of the Crowley 2 Acres Water System owned by Mr. Bell." Ms. Fireside contends that based on section 3(a)(3) of the Open Records Act the commission may withhold an inspection report which was prepared by a district inspector at Ms. Fireside's request. To secure the protection of section 3(a)(3), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance Ms. Fireside made the requisite showing that the requested information relates to pending litigation for purposes of section 3(a)(3); the requested records may therefore be withheld.

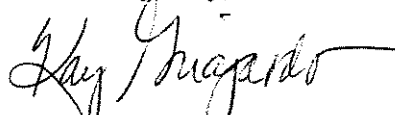
In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 3(a)(3) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 3(a)(3).

We also note that because section 3(a)(3) protects only information that is relevant to the litigation, this section is inapplicable to documents that the presiding judge has ruled undiscoverable because they lack relevance to the lawsuit. The applicability of section

3(a)(3) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Finally, if the commission chooses to waive section 3(a)(3), the report may be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR93-184.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/le

Ref.: ID# 19042
ID# 19759

Enclosures: Submitted documents

cc: Mr. Terry L. Taylor
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